

## REMARKS/ARGUMENTS

In the Office Action mailed December 24, 2008, claims 1, 2, and 4-10 were rejected. Additionally, claims 3 and 11-14 were objected to, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, Applicants hereby request reconsideration of the application in view of the amendments and the below-provided remarks. No claims are added or canceled.

For reference, claims 1, 3, 4, 8-10, and 11-14 are amended. In particular, claims 1, 4, and 8-10 are amended to recite a step of determining an estimate from a reference performance curve. Claims 3 and 11-14 are amended to recite deriving initial rate matching parameters and transmitting initial rate matching parameters. These amendments are supported, for example, by the subject matter previously recited in claims 3 and 11-14, as well as the subject matter described at page 12, line 18, to page 13, line 2, of the originally filed specification.

### Allowable Subject Matter

Applicants appreciate the Examiner's review of the claims and determination that claims 3 and 11-14 recite allowable subject matter. In particular, the Office Action states that claims 3 and 11-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Additionally, while the previous Office Action provides a statement of reasons for the indication of allowable subject matter, the previous Office Action's statement is directed to specific aspects of certain claims and not necessarily all of the claims. Applicant notes that the previous Office Action's comments may have paraphrased the language of the claims and it should be understood that the language of the claims themselves set out the scope of the claims. Thus, it is noted that the claim language should be viewed in light of the exact language of the claim rather than any paraphrasing or implied limitations thereof.

### Claim Rejections under 35 U.S.C. 103

Claims 1, 2, and 8-10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Freiberg et al. (U.S. Pat. No. 6,788,657, hereinafter Freiberg) in view of Higuchi et al. (U.S. Pat. Pub. No. 2002/0012383, hereinafter Higuchi). Additionally, claims 4-6 were rejected under 35 U.S.C. 103(a) as being unpatentable over Freiberg in view of Setty et al. (U.S. Pat. Pub. No. 2003/0103469, hereinafter Setty) and further in view of Reefman et al. (U.S. Pat. Pub. No. 2002/0163455, hereinafter Reefman). However, Applicants respectfully submit that these claims are patentable over Freiberg, Higuchi, Setty, and Reefman for the reasons provided below.

### Independent Claims 1, 4, 8, and 9

Claim 1 recites “a step of determining from a reference performance curve estimates of the individual quality factors matching the corresponding specific predetermined error rate requirements” (emphasis added). Claims 4, 8, and 9 recite similar limitations. It should be noted that the cited embodiment of claim 1 is part of the allowable subject matter that was identified by the Examiner in a previous Office Action.

In contrast, the combination of Freiberg and Higuchi does not teach determining from a reference performance curve estimates of the individual quality factors. Freiberg merely teaches using a coding gain as input to a rate matching to derive to derive a quality of service. Freiberg, col. 8, lines 22-26. Higuchi merely teaches a difference controlling power according to a difference between a detected reception error rate and a target reception error rate. Higuchi, page 7, claim 6, lines 3-8. In fact, both Freiberg and Higuchi appear to be silent with regard to determining from a reference performance curve estimates of the individual quality factors.

Accordingly, Applicants respectfully submit that claim 1 is patentable over the combination of Freiberg and Higuchi because the cited references do not teach all of the limitations of the claims. Similarly, Applicants respectfully submit that claims 4, 8, and 9 are also patentable over the combination of Freiberg and Higuchi for similar reasons.

### Dependent Claims

Claims 2, 3, 5, 6, and 10-14 depend from and incorporate all of the limitations of the corresponding independent claims 1, 4, 8, and 9. Applicants respectfully assert claims 2, 3, 5, 6, and 10-14 are allowable based on allowable base claims. Additionally, each of claims 2, 3, 5, 6, and 10-14 may be allowable for further reasons.

### **CONCLUSION**

Applicants respectfully request reconsideration of the claims in view of the amendments and remarks made herein. A notice of allowance is earnestly solicited.

At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account **50-4019** pursuant to 37 C.F.R. 1.25. Additionally, please charge any fees to Deposit Account **50-4019** under 37 C.F.R. 1.16, 1.17, 1.19, 1.20 and 1.21.

Respectfully submitted,

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